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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-206664.2

**DATE:** April 2, 1982

**MATTER OF:** Kendall Company

**DIGEST:**

1. Protest questioning low bidder's responsibility based on unspecified action pending against the bidder with the Department of Justice is dismissed because GAO does not review affirmative determinations of responsibility except under circumstances not applicable here.
2. Protest filed after bid opening is untimely where it involves alleged improprieties in solicitation apparent prior to bid opening.

Kendall Company protests against the award of a contract to Nashua Corp. under solicitation No. 2FC-NAF-A-A1401-S issued by the General Services Administration.

The protester contends that Nashua Corp. is not a qualified bidder because of an unspecified action pending against the firm with the Department of Justice. Our Office does not review protests against affirmative determinations of responsibility unless fraud is alleged on the part of procuring officials or the solicitation contains definitive responsibility criteria which allegedly have not been applied. Mid America Movers, Inc., B-201740, February 9, 1981, 81-1 CPD 84. Neither exception is applicable here.

The protester further alleges that the specifications contained in the solicitation were modified in July 1981, but it was given no opportunity to comment at that time. Since, at the latest, Kendall knew of the changes when it received the solicitation, this basis of protest concerns the propriety of the solicitation and was apparent prior to bid opening. Therefore, the protest should have

been filed before bid opening. 4 C.F.R. § 21.2(b)(1) (1981). Since bid opening was held on January 6, 1982, and the protest was not filed with our Office until March 16, 1982, this issue is untimely and will not be considered.

Accordingly, the protest is dismissed.

*J. H. Barclay, Jr.*  
*For* Harry R. Van Cleve  
Acting General Counsel